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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/804,191

03/19/2004

Martin Baumert

ATOCM-0349

6742

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7590

04/09/2010

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

PAPER NUMBER

1782

NOTIFICATION DATE

DELIVERY MODE

04/09/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@mwzb.com

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/804,191</p>	<p>Applicant(s) BAUMERT ET AL.</p>	
	<p>Examiner WALTER B. AUGHENBAUGH</p>	<p>Art Unit 1782</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-8,10-18,21,22,24-28,30-34 and 36.
- Claim(s) withdrawn from consideration: 19 and 20.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1794

Continuation of 3. NOTE: The amendments in claims 1, 34 and 36 raise new issues that require further consideration and/or search because the embodiment having the combination of limitations added to each of claims 1, 34 and 36 (from claims 6 and 28) has not been required prior to this after-final amendment.

In regard to the additional claims presented, Applicant presented 3 new claims (38-40), and cancelled two claims in the After-Final Amdt. (claims 28 and 33).

Continuation of 11. does NOT place the application in condition for allowance because: In regard to Applicant's arguments on pages 9-10 of the After-Final Amdt., Applicant argues that Applicant's amendments in the previous response (filed September 10, 2009) did not necessitate the new grounds of the rejection (the obviousness double patenting rejection of the claims). However, Applicant's amendment did necessitate the new grounds of rejection because the new grounds of rejection had to be made to address the amendments in independent claims 1, 34 and 36 (Applicant's calls it a "narrowing amendment" on pages 9 and 10 of After-Final Amdt.). Moving the limitation of dependent claims 29, 35 and 37 into independent claims 1, 34 and 36 made this limitation applicable to all other dependent claims (because it was moved into the independent claims). The new grounds of rejection had to be made to address the amendment in claims 1, 34 and 36, and the new grounds of rejection to the dependent claims was made to address the fact that the "narrowing amendment" then applied to all of the dependent claims due to the amendment, so the new ground of rejection was necessitated by amendment.

In regard to Applicant's arguments regarding the 35 U.S.C. 112, second paragraph, rejection of claims 1, 33, 34 and 36, the specific basis of the rejection has not been addressed in Applicant's arguments. Applicant argues that it is clear "how the grafts are formed" (top page 11 of After-Final Amdt.), but this is not the basis for the rejection. A recitation that X is "from" A does not require that A exists in the final form of X.

In regard to Applicant's arguments regarding the obviousness double patenting rejection, the citations to the specification are used for definition purposes.

Applicant's arguments regarding the art rejections depend upon Applicant's after-final amendments, which have not been entered for the reasons provided above.